

In general, nutritional bars and powdered protein supplement mixes are considered food that is subject to the low rate of tax, assuming that they are purchased for consumption off the premises where purchased. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

December 30, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 12, 1998. We regret the delay in our response. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are writing to request a determination on the applicability of the sales/use tax of your state to a product sold by our company. COMPANY is a network marketing company which sells nutritional, personal care and other consumer products. The products are distributed through independent contractors (Team Members) who recruit other Team Members into their downline. COMPANY collects and remits sale/use tax on behalf of it's Team Members pursuant to an agreement with your state.

We request a determination and explanation of the manner in which the sale/use tax of your state will apply to our product. As the name suggests the product is a combination of products that may be purchased separately. COMPANY has previously received your state's determination of the taxability of the core products in the PRODUCT, namely PRODUCT and PRODUCT. The prior determination of taxability of the products are indicated below.

We are aware, for example, that some states will either allow a proration of tax based on the component parts of a combined pack or allow a certain percentage of otherwise taxable items to be considered as part of a food product when the essential character of the pack is that of a food product.

PRODUCT Contents:

| Product:               | Taxable Status: | Separate Product Price: |
|------------------------|-----------------|-------------------------|
| PRODUCT:               |                 |                         |
| 1 Box-Oatmeal Cinnamon |                 | Food-Reduced Rate       |
|                        | \$19.95         |                         |

|                           |                   |         |
|---------------------------|-------------------|---------|
| 1 Box-Cocoa Peanut Crisp  | Food-Reduced Rate |         |
| \$19.95                   |                   |         |
| 1 Box-Black Cherry Yogurt | Food-Reduced Rate |         |
| \$19.95                   |                   |         |
| 1 PRODUCT                 | Food-Reduced Rate | \$23.95 |
| 1 PRODUCT                 | Food-Reduced Rate | \$19.95 |

Promotional Items:

|                            |         |          |  |
|----------------------------|---------|----------|--|
| 1 PRODUCT                  | Taxable | \$ 10.95 |  |
| 1 A Meal Planner           | Taxable | \$ 1.75  |  |
| 1 B Meal Planner           | Taxable | \$ 1.75  |  |
| 1 C Meal Planner           | Taxable | \$ 1.75  |  |
| 1 D Meal Planner           | Taxable | \$ 1.75  |  |
| 1 Dessert Planner          | Taxable | \$ 1.75  |  |
| 1 PRODUCT Tape             | Taxable | \$ 0.70  |  |
| 1 Promotional Flyer        | Taxable | \$ 0.10  |  |
| 1 Essential Minerals Video | Taxable | \$ 2.00  |  |
| Total                      |         | \$126.25 |  |

|                           |          |       |
|---------------------------|----------|-------|
| Total Food - Reduced Rate | \$103.75 | 82.2% |
| Total Taxable             | \$ 22.50 | 17.8% |

The PRODUCT is sold at a discount to the above total of the components. The discount does not related to any specific product in the pack.

We would greatly appreciate it if you would identify the basis in statute, regulation or ruling for your determination. Please send your response to the following address:

NAME/ADDRESS

If you have any questions please do not hesitate to contact the undersigned at ####. Thank you for your prompt consideration of this matter.

Please find enclosed a copy of 86 Ill. Adm. Code 130.310 regarding the appropriate tax rates for food, drugs, medicines and medical appliances. As you can see from the regulation, food that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) is taxed at the rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. Products that do not meet the appropriate definitions of food, drugs, medicines and medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes.

The manner in which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food generally incur tax at the high rate on all food sales (including bulk or grocery type items). However, if

establishments sell both food that has been prepared for immediate consumption and bulk or grocery type items and also provide facilities for on-premises consumption, the lower rate of tax may be charged on the bulk or grocery type items only if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of collection of receipts. See 86 Ill. Adm. Code 130.310(b)(3).

If establishments have no seating or facilities for on-premises consumption of food, the tax rate incurred on food sales is determined by whether the majority (over 50%) are bulk or grocery type sales or are sales for immediate consumption. If more than 50% of all food sales are for immediate consumption, the retailer must charge the high rate on all food sales. If more than 50% of all food sales are bulk or grocery type items, all food sales are taxed at the low rate with the exception of hot foods, food that has been prepared for immediate consumption, alcoholic beverages, and soft drinks. See Section 130.310(a). Food for immediate consumption is defined in the regulation as hot food and food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer.

In general, nutritional bars and powdered protein supplement mixes are considered food that is subject to the low rate of tax, assuming that they are purchased for consumption off the premises where purchased. Items such as books, meal planners, audio tapes, and videos are subject to the high rate of tax.

With regard to combination packs, if over 50% of the value of the pack stems from low-rate items that are part of the pack, then the entire pack is taxable at the low rate. However, if the value of the combination pack stems primarily from high-rate merchandise, the pack is taxable at the high rate.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte  
Associate Counsel

GR:msk  
Enc.